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FREEDOM OF INFORMATION ACT REQUEST

FOIA Officer
United States Environmental Protection Agency
Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Submitted VIA FOIA Online

Re: Freedom of Information Act Request Concerning Central Maine Power Company's Transmission Line Project in Maine.

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, Earthrise Law Center, on behalf of the Sierra Club, requests copies of public records in the custody of the U.S. Environmental Protection Agency ("the EPA"), as identified below.

Sierra Club is a national non-profit working with a chapter located in Maine. The Maine Chapter of the Sierra Club is a volunteer-run, grass roots organization representing approximately 18,000 members and supporters who care deeply about Maine's natural environment. The Maine Chapter works to, *inter alia*, protect Maine's wilderness heritage, fight global warming, safeguard Maine's clean water, and promote clean air and energy efficiency. Sierra Club has many members who regularly visit and recreate in the areas of Maine where Central Maine Power Company ("CMP") proposes to construct high voltage transmission lines and related facilities, and the Sierra Club's members' use and enjoyment of those areas will be directly and/or indirectly affected by the proposed project.

Factual Background

Sierra Club requests the information identified below because it is concerned about impacts to Maine's environment and natural resources that will be caused by CMP's plan to construct and operate high voltage transmission lines totaling approximately 175 miles and stretching from the Maine-Canada border to Lewiston. For nearly a decade, Massachusetts has sought electrical power from large hydropower dams in northern Canada. On July 27, 2017, CMP applied to the Department of Energy ("DOE") for a Presidential Permit for the project. *See* 82 Fed. Reg. 45,013 (Sept. 27, 2017). While a decision on that permit is pending, CMP also

applied for a permit from the U.S. Army Corps of Engineers (“Corps”) to conduct work in the waters of the United States, including the filling of wetlands and horizontal directional drilling under the Kennebec River. On March 26, 2019, the public portion of the federal evaluation of the CMP Transmission Project began with the issuance by the Corps of Notice of CMP’s permit application (NAE-2017-01342) and providing the public with an opportunity to comment. On April 25, 2019 and June 6, 2019, Sierra Club submitted comments pursuant to the Corps’ public notice, but as Sierra Club’s comments made clear, the Corps did not provide the necessary information to the public to facilitate fully informed comments. The EPA, in an April 25, 2019 letter to the Corps commenting on the proposed project, agreed with Sierra Club regarding the deficiencies of the Corps’ public notice. Sierra Club now seeks information from EPA related to the CMP Transmission Line project through the FOIA process.

On January 9, 2020, Sierra Club submitted a FOIA request to EPA (“January 9th Request”), which EPA designated as EPA-R1-2020-002182. In a March 30, 2020 letter, EPA made a final determination and response to the January 9th FOIA. This FOIA request seeks responsive records that post-date the January 9th Request to the present, and it is intended to supplement the January 9th Request, not duplicate it.¹

Documents Requested

The Sierra Club requests any and all NEPA analyses, documents, or communications regarding the Central Maine Power Company’s Transmission Line Project and CMP’s application to the Corps for a permit to conduct work in the waters of the United States related to the project. This request includes, but is not limited to:

1. Any and all documents related to or addressing impacts to wetlands, vernal pools, streams, and other waters of the United States associated with the CMP Transmission Project;
2. Any and all documents and communications between the EPA and any other state or federal agency, any elected official, or with Canadian officials related to the CMP Transmission Line Project;
3. Any and all documents and communications between the EPA and the Central Maine Power Company and any other private companies involved in the CMP Transmission Project;
4. Any and all documents related to or addressing impacts to species listed under the Endangered Species Act associated with the CMP Transmission Line Project.
5. Any and all documents related to analyses of greenhouse gas emission impacts associated with the CMP Transmission Line Project;
6. Any and all documents related to impacts to historic or culturally significant properties associated with the CMP Transmission Line Project.
7. Any and all documents related to EPA’s April 25, 2019 letter to the Corps regarding the CMP Transmission Line Project.

¹ The cutoff date EPA employed in responding to the January 9th Request is unclear. Through its review of the records, Sierra Club found 17 records that post-date the January 9th Request, with the latest one being dated March 6, 2020.

This request applies to all such records in whatever form, including (without limit) correspondence, memoranda, notes, telephone conversation notes, e-mail messages and electronic files, the release of which is not expressly prohibited by law. It also covers any nonidentical duplicates of records that, by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. This request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of this request. To save resources and mailing expense, we request electronic copies of these documents if available.

Finally, the Sierra Club respectfully requests that the EPA include in its response an explanation of which documents, if any, may be privileged or exempt from this FOIA request. If you claim that the records should not be disclosed, please justify your refusal by referring to the specific exemption that you are invoking under the FOIA. 5 U.S.C. § 552(b). Also, please provide those portions of documents with information requested that are not specifically exempted from disclosure. Sierra Club reserves the right to appeal any denial.

Fee Waiver Request

Sierra Club also requests a waiver of all fees associated with this request, pursuant to 5 U.S.C. § 552(a)(4)(iii), because disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See Ettlinger v. F.B.I.*, 596 F. Supp. 867, 872 (D. Mass. 1984) (“The legislative history of the FOIA clearly indicates that Congress intended that the public interest standard for fee waivers embodied in 5 U.S.C. § 552(a)(4)(A) be liberally construed.”); *see also Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 432 F.3d 945, 947 (9th Cir. 2005) (“FOIA is to be liberally construed in favor of waivers for noncommercial requesters.”). Following is a response to the fee waiver requirements set out in 40 C.F.R. §§ 2.107(l)(1) and (l)(2)(i)-(iv). EPA granted the fee waiver request for the January 9th Request, which sought similar records but for a larger time frame.

I. Disclosure of This Information Is in the Public Interest Because It Will Contribute Significantly to Public Understanding of the Operations and Activities of the Government.

Sierra Club's request for disclosure of the above information is in the public interest because it will significantly contribute to the public's understanding of the Corps' operations and activities throughout the state of Maine along the 175-miles of transmission corridor related to the project. Given EPA's oversight and concurrent jurisdiction over discharges into waters of the United States, understanding its perspective and positions on this project is critical. As shown below, the Sierra Club's request meets all of the fee waiver regulatory requirements, and therefore this fee waiver request should be granted.

a. The Subject Matter of the Request Involves Issues That Will Significantly Contribute to the Public Understanding of the Operations or Activities of the EPA and the Corps.

First, the subject matter of the Sierra Club's request directly concerns the operations and activities of federal government departments—the EPA and the Corps—related to work in the waters of the United States. The relevant activities are the Corps' permitting of and related environmental analysis for CMP's Transmission Project, and EPA's concurrent oversight of and comments on that permit, pursuant to its authority under the Clean Water Act. The federal government is in the process of analyzing the impacts of this project, and the Sierra Club merely seeks all of the documents, from all federal agencies involved, surrounding the NEPA process in order to fully understand the scope of the EPA's and the Corps' analyses. Therefore, the subject of the request involves issues that will significantly contribute to public understanding of the operations or activities of two federal agencies—the EPA and the Corps.

b. The Informative Value of the Information to Be Disclosed Is High, and Disclosure Will Be Meaningful.

Second, the informative value of the information to be disclosed is high, and disclosure will be meaningful because it will provide Sierra Club members and interested members of the public with the full picture of the EPA's and the Corps' NEPA analysis of activities that will directly impact Maine's environment and natural resources. Since the information requested was developed for the NEPA process, disclosure is not likely to be heavily redacted. Relatedly, the information requested is not fully available in the public domain because the Sierra Club requests all communications with other agencies, with CMP, and internal discussions of the EPA. Finally, the requested information is particularly meaningful because it will provide insight into the decision-making process in time for the Sierra Club and interested members of the public to comment on the CMP Transmission Project, both in the Corps' Clean Water Act § 404 permitting process, as well as in other state and federal level administrative proceedings.

c. Disclosure of This Information Will Inform the Public Rather Than Simply the Sierra Club or a Small Segment of Interested Persons.

Third, disclosure of this information will inform the public rather than simply the Sierra Club or a small segment of interested persons. Here, disclosure will reach a broad public audience. The Sierra Club's Maine Chapter has approximately 18,000 members and supporters and regularly sends email updates and alerts about issues affecting Maine's environment and natural resources to these members. The Sierra Club also publishes and sends to its members and others regular publications, including its newsletter, the Maine Sierran, which discuss developments and issues relating to the protection of the environment. The Spring 2019 issue of the Maine Sierran included an article on the CMP Transmission Project. The Sierra Club's website and social media pages contain public information as well. Through these media, the Sierra Club will reach a broad audience of interested persons. Finally, the Sierra Club has the ability to understand and process this information through its regional staff who are familiar with this issue on the ground and have written and testified about this issue in the past. The Sierra Club has made the records EPA produced pursuant to the January 9th Request available to interested organizations and persons outside of the Sierra Club. As a result, disclosure of this information will inform the public rather than simply the Sierra Club or a small segment of interested persons.

d. Disclosure Will Contribute Significantly to Public Understanding of the Operations or Activities of the EPA and the Corps.

Fourth, disclosure of the requested information will contribute significantly to public understanding of the operations or activities of the EPA and the Corps because the Sierra Club plans to provide a unique summary of the requested records, many of which are not publically available. First, as noted above, based on information and belief, many, if not most, of the requested records are not publicly available. Further, even if they are, the records are not available in a form or organized in a way that the public can easily access and/or understand. The Sierra Club plans to analyze and summarize the records through its unique perspective and expertise as an advocate for Maine's environment and natural resources with staff and members on the ground. Considering all of these factors, disclosure of the requested records will significantly enhance public understanding of the issue.

II. Sierra Club Has No Commercial Interest in Disclosure.

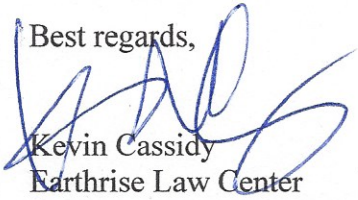
Where a court has found the request to be primarily in the requestor's commercial interest, there has been specific and clear evidence of that interest. *See, e.g., VoteHemp, Inc. v. DEA*, 237 F. Supp. 55 (2002) (VoteHemp's website contained links to commercial interests and the requestor's mission included business promotion). There is no such concern here. The Sierra Club is a national non-profit with a mission to "explore, enjoy and protect the planet" and "to practice and promote the responsible use of the Earth's ecosystems and resources." As such, the Sierra Club has no commercial, trade, or profit interest in disclosure. Nor will the Sierra Club receive any commercial benefit or payment from the disclosure.

Further, since the Sierra Club does not have a commercial interest in disclosure, the public interest here clearly outweighs any other interests. Even assuming, *arguendo*, that the Sierra Club had a commercial interest, its primary interest is to inform the public of the activities of the EPA and the Corps regarding an issue that will directly affect the public's interest in and use of a large section of Maine's environment and natural resources, including endangered species. Therefore, the Sierra Club's primary interest in disclosure is a public interest.

Conclusion

Earthrise Law Center is representing Sierra Club for purposes of this FOIA request. As provided by FOIA, 5 U.S.C. § 552(a)(6), we trust that we shall receive a reply to this request within twenty business days of receipt. Thank you for your time and attention in this matter, and we look forward to hearing from you shortly. If you have any questions, feel free to contact Kevin Cassidy at Earthrise Law Center, using the contact information set forth above.

Best regards,


Kevin Cassidy
Earthrise Law Center